In the High Court of Punjab and Haryana at Chandigarh.

F.A.O. No.435 of 1993.

Date of decision:4.7.2007.

Neero Devi and others.

...Appellants.

Versus

Sanga Singh and others.

...Respondents.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.K.S. Chahal Advocate for the appellants.

Mr.Inderjit Sharma Advocate for United India Insurance Company Limited respondent No.2.

...

Judgment.

S. N. Aggarwal, J.

The appellants filed the claim petition under Section 166 of the Motor Vehicles Act for claiming compensation to the tune of Rs.six lacs for the death of Sadda Nand who died in a motor vehicle accident.

The version of the claimants/appellants was that on 3.3.1990, Sadda Nand was travelling in truck No.PAC-2537 as its cleaner . The said truck was owned by M/s Mangla Rice Mills, Dhuri, respondent No.3. It was being driven by Sanga Singh, driver

respondent No.1. It was insured with M/s United India Insurance Company Limited, respondent No.2. At about 11.30 PM on the night intervening 3rd and 4th of March,1990, the said truck was being driven by Sanga Singh, respondent in the jurisdiction of Police Station Amargarh rashly and negligently. As a result, the truck turned turtle by which said Sadda Nand suffered multiple injuries .The occurrence was witnessed by Faqir Singh, driver and Charan Singh cleaner of truck No. PJG-5637 which was following truck No.PAC-2537 Sadda Nand was shifted to Rajindra Hospital, Patiala but he succumbed to the injuries at 3 PM on 4.3.1990. Said Sadda Nand was getting Rs.2,000/- per month as salary as cleaner. The claimant/appellant No.1 Neero Devi was the widow of Sadda Nand while the other claimants/appellants Nos.2 to 4 were the minor daughter and sons of said Sadda Nand. Hence, compensation to the tune of Rs. six lakhs was prayed.

The respondents admitted that Sadda Nand was working as a cleaner on truck No. PAC-2537 and Sanga Singh was its driver. It was also admitted that the said truck met with an accident on the night intervening 3rd/4th of March,1990 but it was denied if Sanga Singh was driving the truck rashly or negligently. It was admitted that the truck was owned by M/s Mangla Rice Mills, Dhuri and it was insured with the United Insurance Company. It was also pleaded that Sadda Nand was getting Rs.850/- per month as salary.

The respondent-Insurance Company also took the plea that

Sanga Singh was not holding valid driving licence and,therefore, the Insurance Company was not liable to pay any compensation.

On these pleadings, issues were framed by the learned Motor Accident Claims Tribunal, Sangrur.

The parties led the evidence.

The learned Tribunal came to the conclusion that Sanga Singh was not driving the truck rashly or negligently. It was held by the Tribunal that since Sadda Nand was employee of the owner of the truck, therefore, the claim petition under Section 166 of the Motor Vehicles Act was not maintainable. Rather, the dependents of Sadda Nand were entitled to compensation under the Workmen Compensation Act. Accordingly, the learned Tribunal awarded a sum of Rs.71,000/- which was apportioned between the claimants. The claimant-appellants were also held entitled to interest at the rate of 12% per annum in case the respondents failed to make the payment within 45 days from the date of award dated 17.10.1992.

The appellants have filed this appeal.

The submission of learned counsel for the appellants was that Sanga Singh was negligent in driving truck No.PAC-2537 as proved by Charan Singh, cleaner of truck No.PJG-5637. The said truck was following truck No.PAC-2537. Therefore, Charan Singh was the witness who saw the accident taking place.

This submission has been considered. The accident had

taken place at about 11.30 PM i.e.on the night intervening 3rd and 4th of March, 1990. It was night time. Truck No.PJG-5637 was at a distance of 1-1/2 Kilometres from truck No.PAC-2537 which had met with an accident. Therefore, it is unbelievable if Charan Singh could see the accident taking place from a distance of 1-1/2 Kilometres in the dark night. It may be that within few minutes, truck No.PJG-5637 reached the place of occurrence in which Charan Singh was the cleaner and it may be that Charan Singh took steps in taking the injured to the hospital but it is not believable if Charan Singh could see the occurrence taking place from a distance of 1-1/2 Kilometres in the night time. Therefore, the learned Tribunal has rightly held that Charan Singh was not the eye witness to the occurrence and is not believable about the manner in which the accident took place.

The other submission of learned counsel for the appellants was that Sanga Singh was under the influence of liquor. That plea is also supported by the statement of Charan Singh, P.W. There is no independent evidence. Moreover, Sanga Singh himself had reported the matter to the police on the basis of which DDR No.16 dated 4.3.1990, Exhibit P-1, was scribed in Police Station, Amargarh. In the said D.D.R, the circumstances are narrated in which the accident had taken place. If Charan Singh had been an eye witness, he would have reported the matter to the police, but, in the present case, not to speak of reporting the matter to the police, Charan Singh even did not make

the statement before the police during the investigation of this case. Therefore, it is not believable if Sanga Singh was under the influence of liquor and it appears to be an after thought. There is no medical evidence if Sanga Singh was under the influence of liquor at the time of accident.

The learned Tribunal has held that the accident had taken place as an act of God and not because of negligence of its driver Sanga Singh. This Court does not find any ground to interfere with the said finding of fact recorded by the learned Tribunal.

The next submission of the learned counsel for the appellants was that the amount of compensation awarded is highly inadequate.

This submission has been considered. The claimants had alleged the income of Sadda Nand to be Rs.2,000/- per month but the respondents had pleaded that the income of Sadda Nand was only Rs.850/- per month as a cleaner of truck No.PJG-5637. If the claimants-appellants had any doubt about the stand taken by the respondents, they could have summoned the record of the employer regarding the salary being paid to Sadda Nand but that was not done. Therefore, the learned Tribunal had no other option but to reach the conclusion that the salary income of Sadda Nand was Rs.840/- per month.

The learned Tribunal, therefore, has assessed the amount of

compensation properly by applying the principles laid down under the Workmen Compensation Act. The amount of compensation is neither inadequate nor it suffers from any illegality.

There is no merit in the present appeal and the same is dismissed.

July 4,2007. (S. N. Aggarwal)
Jaggi Judge